



Seirbhís Aisíoca Príomhchúraim  
Bealach amach 5 an M50, Án Bóthar Thuaidh, Fionnghlas, Baile Átha Cliath 11, D11 XKF3  
Guthán: 01 8647100

Primary Care Reimbursement Service  
Exit 5, M50, North Road, Finglas, Dublin 11, D11 XKF3  
Tel: 01- 8647100

**Private & Confidential**  
Mr Ken Foxe.

Email: ken@righttoknow.ie

20 December 2018

Subject: FOI C596/18

Dear Mr Foxe,

I refer to your request, which you made under the Freedom of Information Act 2014 (the “Act”) for access to records held by the Health Service Executive (the “HSE”) Primary Care Reimbursement Service (the “PCRS”).

Your request was received by the HSE PCRS on the 26 November, 2018.

You wish to obtain the following under FOI request:

*“Copies of any records held relating to concerns expressed by representative bodies about release of payment details by the HSE relating to GPs or GP practices. This request to cover the period 1 June 2017 to date of receipt of the request.”*

I wish to advise you that following consideration of the provisions of the Act a final decision was made by me today to grant you access to the records you request.

Please find attached the record you request.

### **Rights of Appeal**

You may appeal this decision. In the event that you need to make such an appeal, you can do so by writing to **Mr Kieran Healy, Health Service Executive, Primary Care Reimbursement Service, Exit 5, M50, North Road, Finglas, Dublin 11**. Your correspondence should include a fee of €30 (€10 for medical card holders and their dependants) for processing the appeal. Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to the Health Service Executive. You should make your appeal within 4 weeks from the date of

this notification; however, the making of a late appeal may be permitted in appropriate circumstances. *A week is defined in the Act to mean 5 consecutive weekdays, excluding Saturdays and public holidays (Sundays are also excluded, as they are not weekdays).* An appeal involves a complete reconsideration of the matter by a more senior member of the staff of the Health Service Executive. I am enclosing a copy of the Summary Review Rights under the Act.

Should you wish to discuss the above please contact me at Dublin [REDACTED] or email [REDACTED]

Yours sincerely,

[REDACTED]  
Gerry Mulligan,  
FOI Decision Maker PCRS.

Ann Marie Hoey  
Assistant National Director  
Primary Care Reimbursement and Eligibility  
Health Service Executive  
Exit 5, M50  
Finglas  
Dublin 11

28<sup>th</sup> August 2017

By email: [REDACTED]

Dear Ms Hoey,

I am writing to you following the release of details of payments made to Primary Care Contractors to the media under FOI today. I was disappointed that we had not received prior notice of the release of this information, as it pertains to the personal data of our members.

On behalf of the NAGP's almost 2000 members I object in the strongest possible terms to the yearly release of 'total amounts paid' to General Practitioners.

As stated to you in our letter of the 20<sup>th</sup> December 2016, I believe that the exemptions outlined in the Freedom of Information Act ('the Act'), including section 37 provides for the exemption of Personal Data. As many GPs across the country are largely dependent on GMS payments, it is clear that this information would be classified as Personal Data.

I am of the view that it is possible for the HSE to comply with its obligations under this section without the need to disclose 'total amounts paid' to individual General Practitioners. I say this on the basis that the contracts and the levels of individual payments made by the HSE are publicly available.

The Interpretation section of the Act states as follows:

'An Act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies, other bodies in receipt of funding from the State and certain other bodies and to enable persons to have personal information relating to them in the possession of such bodies....'

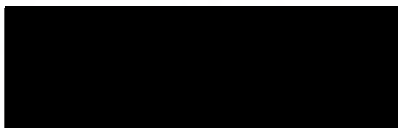
It would seem clear that the Oireachtas, in enacting the Act, was cognisant of the right of individuals to protect their privacy. On the basis of the above, I am of the view that there is no statutory basis or public interest justification in publishing 'total amounts paid' to individual GPs.

The NAGP fully supports the need for openness and accountability, but the release of information of this nature, in the manner it was today, without adequate explanation of the overheads faced by many GPs, has not contributed to the above aim. The release of the information continues to cause GPs considerable distress.

As I have said above, I believe that it is possible for the HSE to comply with its obligations under the Act without disclosing the Personal Data of GPs.

I look forward to hearing from you.

Yours sincerely,



Chris Goodey

Chief Executive





Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

Oifig an Stiúrtóra Cúnta Náisiúnta  
Seirbhís Aisioca Priomhchúraim & Cáilitheacht  
Seirbhís Aisioca Priomhchúraim  
Bealach amach 5 an M50, Án Bóthar Thuaidh, Fionnghlas, Baile Átha Cliath 11, D11 XKF3  
Guthán: 01 8915729

Office of Assistant National Director  
Primary Care Reimbursement & Eligibility  
Primary Care Reimbursement Service  
Exit 5, M50, North Road, Finglas, Dublin 11, D11 XKF3  
Tel: 01- 8915729

31<sup>st</sup> August 2017

Mr. Chris Goodey  
The National Association of General Practitioners [NAGP]  
17 Kildare Street  
Dublin 2

**Payments to General Practitioners – release of details under Freedom of Information Act 2014**

Dear Mr. Goodey,

I refer to your letter of 28<sup>th</sup> August 2017, received yesterday by email. The NAGP appears to ground its objection to the release of data by the HSE relating to the payment of GPs (having received a valid FOI request) on its assertion that, under the FOI Act 2014, “personal information” is exempt from release under Section 37 FOI Act 2014; therefore, HSE PCRS must first form the view that it is in the public interest to release this “personal information” and if it so forms this view, it must first consult with the relevant contractor identifying the public interest concerned, ascertain their views concerning the proposed release, and only then can HSE PCRS proceed to make a decision to release, which decision is amenable to review by the Information Commissioner.

However, and for the reasons we set out below, the NAGP’s position is fundamentally flawed in this regard. The relevant information is not in fact “personal information” under the FOI Act 2014; the Section 37 qualified exemption in respect of personal information does not apply in relation to this type of contractor information; HSE PCRS has legal obligations pursuant to the FOI Act 2014 to release this information; HSE PCRS has routinely (and validly) released this type of information in response to FOI requests in the past; the Information Commissioner has previously ruled in favour of the release of this type of information on the basis that it is not “personal information”; and data protection legislation permits the release of this type of information pursuant to FOI requests.

For all of the reasons outline above, the NAGP and its relevant members have no grounds to object to the release of the relevant information, and while I note your strong objection to the release of “total amounts paid’ to General Practitioners” it is not appropriate that HSE PCRS withhold or refuse to release such data in response to a valid request submitted in accordance with the FOI Act 2014.

More specifically:-

1. There is a specific definition of “personal information” in Section 2 FOI Act 2014. It is only if information falls within the definition of “personal information” that the Section

37 qualified exemption from release applies. However, in turn, if information does not fall within that definition of "personal information", then the Section 37 exemption does not apply and, in this case, HSE PCRS must release that information under the FOI Act 2014. The relevant part of the Section 2 definition states that the following information does not fall within the definition of "personal information":-

*"...(II) in a case where the individual is or was a service provider, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service" [my emphasis]*

2. "Service provider" is in turn defined under Section 2 FOI Act 2014 as follows:-

*"means a person who, at the time the request was made, was not an FOI body but was providing a service for an FOI body under a contract for services and contract for services in this definition includes an administrative arrangement between an FOI body and another person" [my emphasis]*

3. It is clear from the contracts between the NAGP's members and the HSE that the GPs are service providers to the HSE, and are engaged pursuant to contracts for services. As such, per the exclusion under the definition of "personal information", the GP's name, information relating to the service they provide pursuant to the contract for services and the terms of the contract all fall outside the definition of "personal information" and, as such, can be released in response to a valid FOI request.
4. In the above circumstances, the Section 37 exemption from release of personal information does not apply and HSE PCRS cannot use it in order to refuse the release of the relevant information under FOI. Further, the Section 38 FOI Act 2014 consultation provisions only apply where Section 37 itself applies, and on that basis there is no obligation or indeed ability for HSE PCRS to consult in relation to the release of the relevant information.
5. The total payment figures made to GP service providers clearly falls within the relevant exclusion, being "information relating to the service or the terms of the contract". This position has long been confirmed by the Information Commissioner. Specifically, in the Information Commissioner's decision, number 010102, dated 6 January 2004, it was determined that the salaries of the top 25 presenters at RTE (who were contractors of RTE) should be released pursuant to an FOI request. In her decision, the Information Commissioner stated as follows:-

*"Section 28 of the FOI Act provides for the protection of personal information relating to a third party. For the purposes of the FOI Act, personal information is information about an identifiable individual that (a) would, in the ordinary course of events, be known only to the individual or his/her family or friends, or (b) is held by a public body on the understanding that it would be treated by it as confidential (Section 2). The Act details twelve specific categories of information which is personal without prejudice to the generality of (a) and (b) above, including information relating to the financial affairs of the individual. However, section 2 of the Act also provides for the exclusion of certain information from the definition of personal information including "in a case where the individual is or was providing a service for a public body under a contract for services with the body, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purposes of the provision of the service..". The salaries of presenters who are or were providing a*

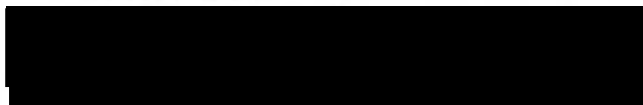


service for RTE under a contract for services clearly comes within this exclusion. Accordingly, I find that the information at issue does not constitute personal information for the purposes of the FOI Act." [my emphasis]

6. The above decision was made by the then-Information Commissioner under the provisions of the previous Freedom of Information legislation, the Freedom of Information Act 1997 (prior to that Act's amendment in 2003). Section 28 of the 1997 Act was in the same terms as Section 37 FOI Act 2014 and Section 2 of the 1997 Act was on the same terms as Section 2 FOIA 2014.

I trust you will accept the rationale for the release of details (on foot of a valid FOI) in respect of payments made to GPs, including members of the NAGP, arising from an individual GPs contract for service with the HSE.

Yours sincerely



Anne Marie Hoey  
Assistant National Director  
Primary Care Reimbursement and Eligibility

Building a Better Health Service

CARE COMPASSION TRUST LEARNING

